

RD AN No. 3633 (1965-E)
April 10, 2001

TO: State Directors and Rural Development Managers

ATTENTION: Multi-Family Housing Directors and Coordinators

FROM: James C. Alsop *(Signed by James C. Alsop)*
Acting Administrator
Rural Housing Service

SUBJECT: Reporting, Authorization and Acceleration Requirements
Related to MFH Preservation Related Activities

PURPOSE/INTENDED OUTCOME:

To help standardize decision making during the prepayment process for Multi-Family Housing (MFH) projects, the Office of Rental Housing Preservation (ORHP) has issued several Administrative Notices (AN) to provide guidance. This AN consolidates that guidance.

COMPARISON WITH PREVIOUS AN:

This AN consolidates preservation guidance previously provided in expired RD AN No. 3527 (1965-E), dated March 24, 2000, and expired RD AN No. 3500 (1965-E), dated December 9, 1999.

IMPLEMENTATION RESPONSIBILITIES:

1. Reporting, concurrence and authorization requirements.

RD Instruction 1965-E requires State Offices to report all borrower requests to prepay MFH projects, including Rural Rental Housing (RRH) and both On Farm and Off Farm Labor Housing (FLH) projects. State Directors must obtain ORHP concurrence with any specific incentive offer, equity loan or non-profit advance grant; and ORHP authorization prior to obligating or implementing any incentive, obligating an equity loan or a non-profit advance grant, or accepting the final payment of any MFH loan. State Offices should discontinue the use of the existing process of Guide Letter 1965-E-1 when the reporting, concurrence and authorization process is replaced by the automated web-based PRE-TRAC application.

EXPIRATION DATE: April 30, 2002

FILING INSTRUCTIONS:
Preceding RD
Instruction 1965-E

2. Considering the impact of acceleration actions on preservation.

When the State Office is considering acceleration of a project loan, the problem case review should also consider the possibility that the borrower is forcing an acceleration to circumvent the prepayment process established by RD Instruction 1965-E. The review should consider the strength of the local housing market and the potential for conversion to conventional housing. If this is found to be a possible motivation, the State Office should work with the Office of the General Counsel (OGC) to determine if there are alternatives to acceleration, such as suing for specific performance under loan and management documents.

3. Third-party equity loans in conjunction with preservation.

RHS debt may be subordinated to allow for third-party equity loans in accordance with the provisions of RD Instruction 1965-B, section 1965.79. Third-party equity loans may also be in the form of junior liens established in accordance with section 1965.83. Tax-exempt bonds are an acceptable form of third-party equity.

Determination of the amount of any third-party equity loan will be in accordance with the general process established for determining Agency incentive equity loans. This process requires the use of an appraisal acceptable to the Agency and a review to assure that rents do not exceed comparable unsubsidized market rents. All appraisals will be developed using an “as is” market value of the property as unsubsidized conventional rental housing.

Pursuant to RD Instruction 1965-B, section 1965.79(b)(2), the State Director or National Office may consider imposing a use restriction in exchange for granting the subordination in order to further the MFH program objective of providing low-cost housing to as many eligible tenants as possible. Typically, the term of the use restriction will be 20 years for borrowers seeking 90% of equity value, 30 years for limited profit borrowers seeking up to 100% of equity at the time of a transfer, and for the “remaining useful life of the project” for non-profit or public body borrowers seeking 100% or 102% of equity. Likewise, the National Office, pursuant to RD Instruction 1965-B, section 1965.83(b)(8), may consider adding comparable use restrictions as a part of its case-by-case review for authorizing junior liens.

State Directors should contact ORHP to request National Office authorization to use a third-party equity loan and either subordinate RHS debt or accept a junior lien. When Rental Assistance (RA) is necessary to allow for a third-party equity loan, National Office approval will be subject to the availability of RA.

4. General incentive offers.

RD Instruction 1965-E, section 1965.213 and the Housing Act of 1949 require the Agency to offer an incentive to extend the restrictive-use when a borrower is eligible to receive incentives. If preliminary discussions with a borrower indicate that the borrower has no interest in receiving incentives to stay in the program, a general incentive offer may be made without the use of an appraisal.

The general incentive offer should reference RD Instruction 1965-E, section 1965.213(d), and list all of the incentives available including equity loans, rental assistance, increased return on investment, excess Section 8 rents, and conversion to or modification of interest credit. The general incentive offer notice must inform the borrower that a specific incentive offer will be provided at the borrower's request. If, as expected, the borrower rejects the general incentive offer, the Agency will proceed to the next steps under section 1965.215.

If the borrower indicates in writing to the Agency that he or she would consider a specific incentive offer, a specific offer must be fully developed in accordance with RD Instruction 1965-E, using an appraisal.

5. Prepayment Process for MFH Loans (both RRH and FLH) Made Between 1979-1989 and Others Which Have Unexpired Restrictive-Use Provisions

This guidance is on how to process prepayment requests from MFH borrowers who received loans on which restrictive-use provisions are still in place. Note these include all MFH loans made after December 21, 1979, and before December 15, 1989, FLH loans made after December 14, 1989, and all MFH loans which have restrictive-use provisions as a result of a servicing action. These loans will be referred to as "restricted" loans.

After receiving a completed application to prepay and determining that the borrower has the ability to prepay, the Agency must make a reasonable effort to enter into a new restrictive-use agreement with the borrower before accepting an offer to prepay from a borrower with a restricted loan. Under this agreement, the borrower would make a binding commitment to extend the low-income use of the housing and related facilities for not less than 20 years, beginning on the date on which the new agreement is executed. While the Agency is statutorily prohibited from offering the borrower any incentives, the Servicing Office is to use its best efforts to enter into an extension of the restrictions with the borrower.

If the borrower is willing to enter into such an agreement, the Servicing Office should have the borrower agree to the restrictive-use provision (RUP) of RD Instruction 1965-E, Exhibit A-3, and sign the restrictive-use agreement (RUA) outlined in Exhibit G-1. The Servicing Office should then take the appropriate steps to make the title of the real property subject to the RUP. When using Exhibits A-3 and G-1 for this purpose, the expiration date to be entered on these forms will be 20 years or more from the date on which the new RUP and RUA are executed, rather than the end of the original RUP and RUA as described on the forms.

If the borrower is unwilling to enter into a new RUP and RUA, the Servicing Office should document this fact in writing, noting the date on which this information was obtained. The document should be included in the casefile. The Servicing Office should then proceed to review the impact on minorities and the availability of affordable housing. Based on that review, borrowers may be permitted to prepay under the following conditions:

- A. If minorities will be adversely impacted, the borrowers must agree to sell the project to a nonprofit or public body at the expiration of the current restrictive-use period by signing the RUP of Exhibit A-4 (paragraph A) and the RUA of Exhibit G-2; or
- B. If there is no impact on minorities, but there is a need for the housing, borrowers must agree to either:
 - 1. Sign the RUPs of Exhibit A-3 to honor the remaining period of the current restrictive-use provisions and Exhibit A-4 (paragraph C) to protect tenants in the project at the end of the current restrictive-use period, and sign the RUAs of Exhibit G-1 and Exhibit G-4. The RUA of Exhibit G-4 will have an effective date beginning with the expiration of the Exhibit A-3 RUP, or
 - 2. Sign the RUP of Exhibit A-4 (paragraph A) and the RUA of Exhibit G-2; or
- C. If there is no impact on minorities and no need for the housing, the borrower must sign the RUP of Exhibit A-3 to honor the remaining period of the current restrictive use provisions and sign the RUA of Exhibit G-1.

Borrowers unwilling to sign additional restrictive-use provisions or agreements as outlined above will be required to either sell the property to a nonprofit organization or public body, or be denied their request to prepay.

6. Questions.

Please direct any questions about these issues to ORHP. You may contact ORHP at:

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